



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

March 29, 1994

Mr. David P. Tatum
Interim Executive Director
Texas Commission on Alcohol
and Drug Abuse
710 Brazos Street
Austin, Texas 78701-2576

Letter Opinion No. 94-032

Re: Effect of Senate Bill 210, Acts 1993, 73d
Leg., ch. 573, at 2157, on exemption of certain
drug dependence treatment facilities from
licensure by the Texas Commission on Alcohol
and Drug Abuse (ID# 21691)

Dear Mr. Tatum:

You ask whether the Commission on Alcohol and Drug Abuse ("the commission") is required to license private psychiatric hospitals that offer chemical dependency treatment programs. The question arises because of statutory amendments made by the 73rd Legislature. The enactment of Senate Bill 210 amended the Health and Safety Code to transfer licensing authority over private psychiatric hospitals from the Department of Mental Health and Mental Retardation ("TDMHMR") to the Department of Health ("DOH"). Acts 1993, 73d Leg., ch. 573, § 4.06, at 2171. We believe that although private psychiatric hospitals are no longer licensed by the TDMHMR, they are still exempt from licensing by the commission.

The commission operates under the provisions of chapter 464 of the Health and Safety Code. That chapter requires persons that "offer or purport to offer chemical dependency treatment" to obtain licenses from the commission. Health & Safety Code § 464.002. Section 464.003 exempts certain facilities from the licensing requirement, including "facilit[ies] licensed by the Texas Department of Mental Health and Mental Retardation." *Id.* § 464.003(3). As indicated in your letter, the passage of Senate Bill 210 by the 73rd Legislature transferred responsibility for licensing private psychiatric hospitals from TDMHMR to DOH. Acts 1993, 73d Leg., ch. 573, § 4.06, at 2171. Thus, those facilities that had been licensed by TDMHMR are now to be licensed by DOH. The legislature did not amend section 464.003(3) to reflect this change.

We believe, however, that private psychiatric hospitals are still exempt from commission licensure because the care and treatment of patients receiving chemical dependency treatment in those facilities will be governed by standards established by the commission, which standards DOH is obligated to enforce. Section 3.02 of Senate Bill 210 adds the following provision to chapter 241 of the Health and Safety Code (the Texas Hospital Licensing Law):

(b) The care and treatment of a patient receiving chemical dependency treatment in a facility licensed by [DOH] under this chapter are governed by the same standards that govern the care and

treatment of a patient receiving treatment in a treatment facility licensed under Chapter 464 and that are adopted by the [commission] to the same extent as if the standards adopted by the commission were rules adopted by the board under this chapter.

(c) The [DOH] shall enforce the standards provided by Subsection[] . . . (b). . . . The [DOH] is not required to enforce a standard if the enforcement violates a federal law, rule, or regulation.

Health & Safety Code § 241.0265; Acts 1993, 73d Leg., ch. 573, § 4.06, at 2171.

It is our duty, in the opinions process, to ascertain and give effect to the legislative intent behind legislative acts. Attorney General Opinion DM-211 (1993) at 4. The obvious intent behind the provisions of Senate Bill 210 under consideration here¹ is the transfer of licensure authority over mental health facilities from TDMHMR to DOH; there is, however, no corresponding intent to subject those facilities to two licensing procedures. While Senate Bill 210 does not expressly repeal the exemption from commission licensing found in section 464.003(3), that act has made the exemption meaningless. The care and treatment of patients receiving chemical dependency treatment, whether they are being treated in a general hospital, a mental hospital or in a chemical dependency treatment facility, are governed by standards promulgated by the commission. Health & Safety Code § 241.0265.

S U M M A R Y

Private psychiatric hospitals are still exempt from licensing by the Commission on Alcohol and Drug Abuse even though they are now licensed by the Department of Health. The care and treatment of patients in those facilities that offer chemical dependency treatment are subject to standards adopted by the Texas Commission on Alcohol and Drug Abuse and enforced by the Department of Health.

Yours very truly,



Rick Gilpin
Assistant Attorney General
Opinion Committee

¹The primary purpose of Senate Bill 210, as a whole, is the protection of patients receiving mental health treatment. See Acts 1993, 73d Leg., ch. 573, art. 1, at 2157 (Abuse, Neglect, and Unprofessional or Unethical Conduct in Health Care Facilities), art. 2, at 2161 (Sexual Exploitation by Mental Health Services Provider), art. 3, at 2168 (treatment methods advisory committee), art. 5, at 2171 (Illegal Remuneration); see also House Comm. on Pub. Health, Bill Analysis, S.B. 210, 73d Leg. (1993).